UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/726,372	12/03/2003	Fatih Ozluturk	I-2-0566.1US	7154

24374 7590 01/14/2008

VOLPE AND KOENIG, P.C.
DEPT. ICC
UNITED PLAZA, SUITE 1600
30 SOUTH 17TH STREET
PHILADELPHIA, PA 19103

EXAMINER	
ADDY, ANTHONY S	

ART UNIT	PAPER NUMBER
2617	

MAIL DATE	DELIVERY MODE
01/14/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/726,372	OZLUTURK ET AL.	
	Examiner	Art Unit	
	Anthony S. Addy	2617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *22 October 2007*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-10 and 12-18* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-10 and 12-18* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

1. This action is in response to applicant's amendment filed on October 22, 2007. **Claims 1-10** and **12-18** are pending in the present application.

Response to Amendment

2. The declaration filed on October 22, 2007 under 37 CFR 1.131 has been considered but is insufficient to overcome the Keskar reference.

3. The evidence submitted is insufficient to establish a conception of the invention prior to the effective date of the Keskar reference. While conception is the mental part of the inventive act, it must be capable of proof, such as by demonstrative evidence or by a complete disclosure to another. Conception is more than a vague idea of how to solve a problem. The requisite means themselves and their interaction must also be comprehended. See *Mergenthaler v. Scudder*, 1897 C.D. 724, 81 O.G. 1417 (D.C. Cir. 1897). In the instant application, Applicant has submitted Exhibit A as allegedly proving conception of the invention prior to the effective date of Keskar. Although Exhibit A discloses a cognitive radio, Exhibit A fails to show or otherwise support the claimed features of a user interaction pattern monitoring device for monitoring user interaction patterns of the user, monitoring device parameter settings, and correlating user interaction patterns with device parameter; an associated memory for storing user interaction patterns, device state, and correlation information; a cognitive logic device for analyzing the user interaction patterns, parameter state, and correlation information and for determining adjustments to the user device processing unit corresponding to

particular user input, wherein the adjustments are based on increasing the ease using a wireless device; and a user device processing unit controller for adjusting the user device processing unit in response to receipt of the particular user input in accordance with the determined adjustments, as recited in claims 1, 6, 12, 13 and 18. Applicant is welcomed to point out where in Exhibit A the Examiner can find support for said features if Applicant believes otherwise.

4. The evidence submitted is insufficient to establish diligence from a date prior to the date of reduction to practice of the Keskar reference to either a constructive reduction to practice or an actual reduction to practice. It is not enough merely to allege that applicant had been diligent. Applicant must show evidence of facts by either affirmative acts or acceptable excuses in order to establish diligence. The statement by co-inventor, Prabhakar Chitrapu that "Due diligence was exercised from May 29, 2003 on which the Inventor's notes were prepared up to the filing data of Provisional Application No. 60/506,079 and the subsequent filing of the present application based thereon" is insufficient. The critical period in which the diligent must be shown begins just prior to the effective date of the Keskar reference, 06/20/03, and ends with the date of the constructive reduction to practice, 9/24/03. The period during which diligence is required must be accounted for by either affirmative acts or **acceptable excuses**. Rebstock v. Flouret, 191 USPQ 342, 345 (Bd. Pat. Inter. 1975); *Reiser v. Williams*, 225 F.2d 419, 423, 118 USPQ 96, 100 (CCPA 1958) (Being last to reduce to practice, party cannot prevail unless he has shown that he was first to conceive and that he exercised reasonable diligence during the critical period from just prior to opponent's entry into the

field); *Griffith v. Kanamaru*, 816 F.2d 624, 2 USPQ2d 1361 (Fed. Cir. 1987) (Court generally reviewed cases on excuses for inactivity including vacation extended by ill health and **daily job demands**, and held lack of university funding and personnel **are not acceptable excuses**); *Morway v. Bondi,* 203 F.2d 741, 749, 97 USPQ 318, 323 (CCPA 1953) (voluntarily laying aside inventive concept in pursuit of other projects is generally not an acceptable excuse although there may be circumstances creating exceptions).

5. Furthermore, Applicant has failed to provide evidence to support the establishment of diligence since the entire period from just prior to the effective date of the Keskar reference, June 20, 2003 to the date of the constructive reduction to practice, September 24, 2003 has not been accounted for. An applicant must account for the entire period during which diligence is required. Gould v. Schawlow, 363 F.2d 908, 919, 150 USPQ 634, 643 (CCPA 1966) (Merely stating that there were no weeks or months that the invention was not worked on is not enough.); In re Harry, 333 F.2d 920, 923, 142 USPQ 164, 166 (CCPA 1964) (statement that the subject matter "was diligently reduced to practice" is not a showing but a mere pleading). A 2-day period lacking activity has been held to be fatal. In re Mulder, 716 F.2d 1542, 1545, 219 USPQ 189, 193 (Fed. Cir. 1983) (37 CFR 1.131 issue); Fitzgerald v. Arbib, 268 F.2d 763, 766, 122 USPQ 530, 532 (CCPA 1959).

6. Applicant is reminded that the 37 CFR 1.131 affidavit must contain an allegation that the acts relied upon to establish the date prior to the reference or activity were

carried out in this country or in a NAFTA country or WTO member country.

MPEP715.07(c).

7. The declaration filed on October 22, 2007 under 37 CFR 1.131 is insufficient to overcome the Keskar reference.

Claim Rejections - 35 USC § 102

8. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

9. Claims **1-6, 8-10** and **12-18** are rejected under 35 U.S.C. 102(e) as being anticipated by **Keskar et al., U.S. Publication Number 2004/0259536 A1 (hereinafter Keskar)** for the reason of record.

Regarding claims 1, 6, 12, 13 and 18, Keskar teaches a method of optimizing user inputs (see Fig. 2) and an electronic user cognitive device (see abstract, p. 1 [0011] and Fig. 1; shows a mobile device 155) comprising: a user input device for receiving input from a user (see p. 1 [0012] and p. 3 [0022]); a user device processing unit for performing functions of the electronic device (see p. 3 [0021-0022]); a user interaction pattern monitoring device for monitoring user interaction patterns of the user, monitoring device parameter settings, and correlating user interaction patterns with device parameter settings (see p. 1 [0012], p. 2 [0018], p. 3 [0021] and Fig. 1; shows a preprocessing module 150 [i.e. reads on a user interaction pattern monitoring device]); an associated memory for storing user interaction patterns, device state, and correlation information (see p. 2 [0014] and p. 3 [0021-0022]); a cognitive logic device for analyzing

the user interaction patterns, parameter state, and correlation information and for determining adjustments to the user device processing unit corresponding to particular user input, wherein the adjustments are based on increasing the ease using a wireless device (see p. 2 [0014-0016, 0018 & 0020], p. 3 [0021] and Fig. 1; shows a context processing module 100 [i.e. reads on a cognitive logic device for analyzing the user interaction patterns]); and a user device processing unit controller for adjusting the user device processing unit in response to receipt of the particular user input in accordance with the determined adjustments (see p. 2 [0014-0016, 0018 & 0020] and p. 3 [0021-0022]).

Regarding claims 2, 8 and 14, Keskar teaches all the limitations of claims 1, 6 and 13. In addition, Keskar teaches a method and an electronic device, wherein the determined adjustments include changes to parameters, configurations and states of the user device processing unit (see p. 2 [0015-0019]).

Regarding claims 3, 9 and 15, Keskar teaches all the limitations of claims 1, 6 and 13. In addition, Keskar teaches a method and an electronic device, wherein the cognitive logic device uses a cognitive model that creates rules based on an observed interactions of the user (see p. 2 [0014-0020]).

Regarding claims 4, 10 and 16, Keskar teaches all the limitations of claims 3, 6 and 15. In addition, Keskar teaches a method and an electronic device, wherein the user device unit controller selectively turns off rules in response to user interaction through the user input device (see p. 2 [0017]).

Regarding claims 5 and 17, Keskar teaches all the limitations of claims 1 and 13. In addition, Keskar teaches a method and an electronic device, wherein the cognitive logic device categorizes the use pattern information into either common interaction patterns or style interaction patterns and adjusting the electronic device based on the common interaction patterns and selectively adjusting the electronic device based on the style interaction patterns in response to a current user interaction style (see p. 2 [0014-0020]).

Claim Rejections - 35 USC § 103

10. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

11. Claim **7** is rejected under 35 U.S.C. 103(a) as being unpatentable over **Keskar et al., U.S. Publication Number 2004/0259536 A1 (hereinafter Keskar)** as applied to claim 1 above, and further in view of **Well Known Prior Art – Official Notice.**

Regarding claim 7, Keskar teaches all the limitations of claims 6. Keskar fails to explicitly teach the processing unit comprises a digital signal processor (DSP) and a reduced instruction set (RISC) processor.

However, the examiner takes Official Notice that the use of a digital signal processor (DSP) and a reduced instruction set (RISC) processor is very well known in the art and therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to implement a digital signal processor (DSP) and a reduced instruction set (RISC) processor in the mobile device of Keskar, in order to provide a

sufficient advantage and acceptable response time to the user interface of the mobile device when user pattern recognition functions are applied to complex data sets.

Response to Arguments

12. Since the declaration filed on October 22, 2007 under 37 CFR 1.131 is insufficient to overcome the Keskar reference and the applicant did not provide further arguments as to why the 35 U.S.C. 102(e) and 35 U.S.C. 103(a) rejections using Keskar would not have been anticipated or obvious, the rejections are therefore repeated and maintained.

Conclusion

13. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony S. Addy whose telephone number is 571-272-7795. The examiner can normally be reached on Mon-Thur 8:00am-6:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Duc M. Nguyen can be reached on 571-272-7503. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

A.S.A

DUC M. NGUYEN
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2600